

Memorandum

To: Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard
Honorable John Chiang
Honorable Steve Westly

Date: March 3, 2004

From: Jean Ogrod
Acting Chief Counsel



Subject: **Rules of Practice Public Hearing – March 23, 2004**
Revised Language for Regulation 5070, subsection (h)

Proposed amendments to the Rules of Practice (Title 18, California Code of Regulations, sections 5010-5095) are scheduled for public hearing on March 23, 2004. Authorization to publish the proposed amendments was approved by the Board at the December 4, 2003 Customer Services and Administrative Efficiency Committee.

One of the proposed amendments approved for publication was to Regulation 5070, subsection (h), which defines the word “petition” as used in the Board’s Rules of Practice. In subsection (h), staff proposed amending “petition for reconsideration” to “petition for rehearing” and “petition for reconsideration of successor liability” to “petition for rehearing of successor liability.” These amendments were proposed for the purpose of consistency since the phrase “petition for reconsideration” does not appear elsewhere in the Rules of Practice. However, in response to a comment received from board staff during the public comment period, we have determined that in appeals involving successor liability the appropriate terminology is in fact “petition for reconsideration” because “reconsideration” is the term used in the Revenue and Taxation Code.¹ Therefore, we are recommending that the Board retain the existing terminology of “petition for reconsideration of successor liability.”

Consistent with the above recommendation, at the public hearing on March 23, 2004, we are asking the Board to adopt the following amendment of Regulation 5070, subsection (h):

(h) "Petition" means ~~and includes~~ any petition, including a petition for redetermination; claim, including a claim for refund; appeal from an action of the Franchise Tax Board on a claim for refund, deficiency assessment, or jeopardy assessment; request for

¹ Revenue and Taxation Code sections 6814, 9024, 11524, 38564, 46454 and 60474.

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administrative hearing; petition for ~~reconsideration~~rehearing; petition for reconsideration of successor liability; petition for review of local tax reallocation inquires; petition for review of district tax redistribution inquires; and any other matter for administrative decision or adjudication by the Board in any program listed in Regulation 5071. Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (1) disagrees with an assessment and/or determination or (2) requests a hearing, shall be accepted as a petition for redetermination. Staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.

Since the purpose of the proposed amendment was to provide consistency in the terminology used in the Rules of Practice, we are of the opinion that this is a nonsubstantial change that requires no further notice.

If you have any questions regarding this matter, the contact is Senior Tax Counsel Ani Kindall at (916) 324-2195.

cc: Mr. Timothy W. Boyer
Ms. Deborah Pellegrini